CURRENT TRANSPORTATION TOPICS.

Has the Interstate Commerce Commission power to fix rates?

The Federal Commission has on numerous occasions maintained that its power to pass on the reasonableness of rates, implies the power to prescribe rates. The courts, however, have decided against the Commission whenever the question has been brought before them. In the "Social Circle" case, passed on by the United States Supreme Court the thirtieth of last March, it was said:

"Whether Congress intended to confer upon the Interstate Commerce Commission the power to itself fix rates was mooted in the courts below, and is discussed in the briefs of counsel. We do not find any provision of the act that expressly, or by necessary implication, confers such a power. It was argued on behalf of the Commission, that the power to pass upon the reasonableness of existing rates implies a right to prescribe rates. This is not necessarily so. The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider these facts and give them their proper weight. If the Commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is prejudged by the Commission to be reasonable."

In the decision upon the "Import Case," also handed down the thirtieth of March, the court took the same position. The Interstate Commerce Commission did not give up, however. In a case argued last November by the attorney for the Commission before Judge Sage of the United States Circuit Court for the Southern District of Ohio, it was contended that the Supreme Court in the Social Circle and Import Cases, had in mind the exercise by the Commission of a power to prescribe rates "of its own motion and without a hearing of the parties to be affected." One sentence of the Import Case decision was: "We do not wish to be understood as implying that it would be competent for the Commission without a complaint made before it, and without a hearing to subject common carriers to penalties." Judge Sage, however, decided against the Commission and held, as four other United States Judges in other suits have maintained within the past year, that the Commission is given no power by the existing statute to fix rates. The Commission will appeal the case to the Supreme Court, but its chances of success seem very slight from a layman's point of view.

Discriminations in Railway Freight Charges.

The ideal of equality of advantages for all shippers by rail is still far from being realized. Despite the efforts of the Federal and State Commissions, and of the railway traffic associations, discriminations in freight charges are still made. The encouraging aspect of the matter is that the railway associations and boards of trade are studying the evil. and trying to devise means of restraining the illegal and harmful practices of individual companies. At the November meeting of the New York Board of Trade and Transportation, the Committee on Railroad Transportation, whose chairman is Mr. F. B. Thurber, made a report containing a statement of four striking forms of discrimination.

The first form of discrimination mentioned is one connected with the transportation of Western grain. The grain of Kansas, for instance, is purchased by the associated dealers and shipped to Kansas City, where it is unloaded and stored in elevators instead of being sent directly through to Chicago or to seaboard points. The dealers, having thus secured the grain, induce the railroads to cut rates to obtain the shipments. The president of the Chicago Great Western Railway, A. B. Stickney, testified before the Interstate Commerce Commission in Chicago last August, that his competitors charged the Kansas and Nebraska farmer thirteen cents for hauling his corn 200 miles, while they charged the grain dealer six cents for hauling the same grain twice as far to Chicago. The recently reorganized Western Traffic Association has, for the present at least, put a stop to the breaking of grain cargoes at Kansas City, and is attempting to overcome the efforts of the grain dealers to compel the railroads to resort to discriminations against the farmers.

Another well-known method of discriminating in favor of the large shippers, is to charge much lower rates on freight shipped in car-load lots than on goods shipped in less than car-load quantities. This is one of the difficult problems of freight classification; the railroads claim that it costs less to carry goods in car load lots, and hence they ought to charge less, and do all they can to develop traffic. In practice, however, they are thereby maintaining a most injurious form of discrimination, and one that can hardly be justified by any sound theory of rate-making. The cost of service is universally recognized to be only a very general measure of what railway charges for individual or particular shipments ought to be, or, in actual practice, must be.

A third cause of discrimination is the practice of fixing, for carloads of light goods, arbitrary minimum weights, greater than the actual amount of freight that the smaller cars in use will contain.

The "minimum weight" feature of classifications makes the man who uses the smaller cars, pay a higher freight rate on light goods than is paid by the person who secures larger cars, and gives rise to discriminations. The Western Classification Committee, the Railway Club of New York and other bodies are studying this subject, but the prospects of an early solution of the question do not seem very probable.

An old form of discrimination, and one still frequently practiced, is the payment of large mileage fees by the railroad to the owners of private cars. It is asserted that the mileage fees paid in a year, have, in some instances, equaled the entire cost of the private car. The private cars give the large shippers an immense advantage over those doing business on a smaller scale, and tend to concentrate business in the hands of a favored few; while, in the meantime, the net earnings of the railroads are seriously cut into. The Joint Traffic Association has succeeded in reducing mileage fees somewhat, but not enough to stop the discriminations to which they give rise.

The forms which discrimination takes are many. An enumeration of these four prominent ones shows that the elimination of most disciminations can be brought about only by a careful study of their causes by the railway companies themselves, and by a concerted effort on the part of the railroads to put an end to those causes. The continuance of so many kinds of discrimination in spite of state regulation is a strong argument in favor of strengthening railway associations by the sanctions of law.

The Re-Organization of Traffic Associations.

The Joint Traffic Association of the Trunk Lines has now been in existence a year and has met with marked success. During the year the Canadian Pacific has become a member, so that the Association now includes the ten trunk line systems (comprising thirty-two companies), north of the Norfolk and Western Railroad, and west of New England. The lines of lake steamships have not yet become members of the organization, but negotiations to that end are now in progress. The Association's success is mainly due to the fact that its able board of ten managers, one from each large system, is in continuous session ready to deal in a competent manner with the fixing of rates and with the other manifold problems that arise in the conduct of the competitive traffic of the railroads interested. Above the managers stands the Board of Control, composed of the presidents of the railroad companies composing the Association, to whom appeals can be made by any company that objects to the recommendations of the managers regarding any particular rate. By the agreement, no company is to fix

a rate different from that recommended by the managers of the Association and Board of Control, except by a vote of the Board of Directors of the company.

The Interstate Commerce Commission took the ground that this agreement of the Trunk Lines violated the anti-pooling clause (Sec. 5) of the Interstate Commerce Act and the Sherman Anti-Trust Law of 1890, and proceedings against the Association were instituted by the Commission in the United States District Court of Southern New York, but the court held the agreement to be legal.

The parts of the Joint Traffic Association's agreement that were especially attacked in this suit, were Article VII, Section 2, and Article VIII. Section 2 of Article VII of the agreement provides that "the managers shall from time to time recommend such changes in said rates, fares, charges and rules as may be reasonable and just, and necessary for governing the traffic covered by this agreement, and for protecting the interests of the parties hereto therein, and the failure to observe such recommendations by any party hereto as and when made, shall be deemed a violation of this agreement. No company a party hereto shall, through any of its officers or agents, deviate from or change the rates, fares, charges or rules herein reaffirmed or so recommended by the managers, except by a resolution of this board." Article VIII of the agreement declares that "the managers are charged with the duty of securing to each company party hereto, equitable proportions of the competitive traffic covered by this agreement so far as can be legally done."

In holding the agreement legal, Judge Wheeler maintained that "these provisions of the contract do not provide for lessening the number of carriers, nor their facilities; nor for raising their rates, except expressly by its terms not contrary to law, and therefore not beyond what are reasonable. * * * As this case rests wholly upon the contract as made and not upon anything actually done under color of, or beyond it, and each road is left by it to carry on its own business within lawful limits as before, no unlawful restraint of commerce seems to be provided for by it, and no ground for relief under that statute of 1890 is made out." The court further took the ground in the decision that the Interstate Commerce Commission is given power to prosecute parties guilty of violation of the Interstate Commerce Law, and for the enforcement of the same, but is not given the power to "provide remedies." The language of the court is, "Authority is given to the Interstate Commerce Commission to have proceedings for the enforcement of that law taken and prosecuted, but that is understood to refer to the usual and appropriate proceedings in such cases; and seems not to authorize any that are unknown

there. The right given here is to prosecute, but not to provide, remedies." The court did not consider the agreement of the Joint Traffic Association a pooling arrangement "so far as this agreement goes, each road carries the freights it may get over its own line, at its own rate, however fixed, and has the proceeds, net or other, of the earnings to itself. * * * Provision for reasonable, although equal or proportional rates for each carrier; or for a just and proportional division of traffic among carriers, does not seem to be either a pooling of their traffic, or freights; or a division of the net proceeds of their earnings in any sense."

On April 6, before this decision was made, the South-western Traffic Association, comprising the Texas roads, was re-organized, and, in the main, the agreement of the Joint Traffic Association was followed as a model. In October, 1896, the Western Traffic Association collapsed, and the roads composing it established a new association having nearly the same plan of organization as the Joint Traffic Association. If these Associations are successful as they promise to be, and if the United States Circuit Court and Supreme Court decide the agreements to be legal, we may expect to see the other railway traffic associations establish organizations of a similar character. Such a course of events would do much to give stability to railway rates, and to narrow discriminations within closer bounds. If the railways can effectually overcome the forces, internal and external, that in the past have disrupted traffic associations, they will do much to lessen the evil of railway management.

The Intervention of the Courts to Prevent Rate Wars.

Last July a very violent rate war was begun by the Seaboard Air Line against the Southern Railway Company. The cause of the rupture was the establishment by the Southern Railway Company of a line of steamships to run between Baltimore and Portsmouth and Norfolk at the mouth of the James River. The Seaboard Air Line has for many years operated a line of steamboats on the Chesapeake, and consequently it resented the Southern Railroad Company's entrance upon "The Seaboard's territory." The act of the Southern Railroad Company was a perfectly natural and legitimate one. Up to last year, the principal northern terminus of that company had been on the York River, but events having made the mouth of the James a great commercial centre, the company decided to change its terminus to Portsmouth and Norfolk. It preferred to use its own ships for its business with Baltimore, and thus established a line of boats that ran over the same route as the ships of the Baltimore Steam Packet Company, owned by the Seaboard Air Line. This act caused the management of the Seaboard to inaugurate a rate war in July, covering not

only the charges for the steamboat service on the Chesapeake, but also rail charges to the south. Rates to points south of Baltimore, at which there was competition with the Southern Railway Company, were cut 33⅓ per cent. This reduction was met, July 20, by an equal cut on the part of the Southern Railway Company. Thereupon, the Seaboard Air Line extended the cut of 33⅓ per cent to all its business from Boston, Providence, New York and Philadelphia to the South. The Southern Railway Company, feeling itself much stronger than its rival, decided to resort to heroic measures and make the rate war a short and decisive one by ordering a reduction, effective August 1, of 80 per cent in rates.

At this juncture, the receiver of a road in the hands of a United States court, (the Port Royal and Augusta), asked Judge Simonton of the United States District Court of North Carolina, to enjoin both contestants from carrying out the rate reductions announced. Judge Simonton granted a temporary injunction and placed the hearing on the same, for August 15. The decision of Judge Simonton, made after the hearing, was handed down September 1, but he did not make the injunction permanent because his jurisdiction did not extend to all the parties in the controversy. He held, however, that rate war was illegal, that "it did not present a case of competition in rates, but of annihilation of all competitors."

The rate war broke out anew but the stockholders in the companies, and the merchants doing business in cities where rates were not to be cut, became alarmed at the loss of property which the continuance of the war would cause, and appealed to the courts to terminate the struggle. The next step to stop the war was taken by the Wholesale Grocers' Association of Augusta, which made a successful appeal to Judge Speer of the United District Court of Augusta. On September 10, Judge Speer ordered the railroads to restore the rate in force September 5; the basis of his order being that the low rates to Atlanta constituted an unlawful discrimination against Augusta, Macon and other cities, and hence violated section 3 of the Interstate Commerce law. The order was made returnable September 24. The railroads observed the order and restored rates at most points between September 24 and October 1. The Seaboard Line, being uncertain as to the extent to which the injunction applied to their road, did not announce the restoration of rates at all points until another injunction had been ordered (September 19) by Judge Hughes of the United States Circuit Court of the Eastern District of Virginia, sitting in Richmond. The complainant in this case was the Baltimore Trust and Guarantee Company, and other financial institutions holding railroad bonds. This brought the war definitely to an end.

Another interesting feature of this instructive rate war was the order by the railway commissions of Virginia and North Carolina, directing the railroads to reduce the rates on infra-state traffic in the same proportion that through rates had been lowered. This inaugurated a controversy between the railways and the commissions that was not settled when the rate war was terminated by the courts.

Soon after the struggle came to an end, it was announced, October 8, that a New York syndicate, headed by Thomas F. Ryan, had purchased a controlling interest in the Seaboard Air Line, including the Baltimore Steam Packet Company. The natural supposition of everybody was that this syndicate had some connection with the Southern Railway Company, and that the outcome of the rate war was to be the usual one of consolidation. Whether or not the Ryan Syndicate was acting in the interests of the Southern Railway is uncertain; but the fact that the managers of the Seaboard stoutly opposed the purchase by the syndicate, and actually defeated it after contracts had been made by owners of a controlling portion of the stock to transfer their shares to the syndicate, is a significant one. The Seaboard Air Line remains an independent competing company for the present and under its former management. If the rate war has taught the officers of the company that the real controllers of the road are the holders of stocks and bonds, and that these and other property-owners can appeal to the courts to enjoin the officers from waging rate wars that destroy the value of invested property, it has performed a good service. The power of the courts as regulators of railways has been used in a new and very important manner.

Railway Receiverships.

The business depression of the past three years has compelled a large number of railways to pass into the hands of receivers to be sold or reorganized. The objectionable features of existing laws governing railway receiverships have, consequently, become more prominent than usual. The annual address made to the American Bar Association last August by its president, Mr. Moorfield Storey of Boston, contains a most excellent summary of the abuses resulting from the present legal practices connected with railroad receiverships. Mr. Storey only states well-known facts when he declares: "We have seen the managers, while stoutly denying up to the last moment that any such step was contemplated or that the company was in any way embarrassed, secretly prepare a bill in equity and without notice to any one interested file it in the courts of the United States, asking for the appointment of receivers. . . . The managers of the insolvent company have controlled both sides of the litigation; the

plaintiff and defendant have been in legal effect the same person, and that person the debtor company. . . . In brief, the representatives of the debtor ask that the creditors be deprived of that to which they are entitled in order to preserve for the debtor property to which confessedly it is not entitled. The receivership is not sought as incident to other relief, but is the sole and ultimate object of the suit." Mr. Storey would have the laws so amended as to give the real creditors a chance to "be heard in the choice of their trustees." "Every bankrupt and insolvent law that we have ever known has left the choice of the assignees to the creditors and the reasons for this rule apply equally in the cases we are considering."

By a law passed by its last legislature, Kentucky has the honor of being the first state to attempt to remedy the evils of railway receiverships, by giving the creditors greater power. This statute "to provide for the reorganization of railroad and bridge companies," stipulates that when such a corporation is in the hands of the court, "the holders of a majority of any class of securities issued by such company, or any class of creditors" may submit a plan of organization to the court. The plan must provide for the payment of taxes and liens to which labor and supplies are entitled, for the payment or assumption of liens prior to those held by the proposers of the plan, and, lastly, for the issue of new securities to those submitting the plan and to the holders of subordinate claims, in accordance with their respective rights. The court is obliged to consider the plan, and all classes of creditors are to be allowed a hearing. The court may approve, amend or reject the plan, but if it be approved by the court and accepted by persons holding three-fourths of the claims in the possession of the class proposing the plan and by the holders of three-fourths of the subordinate claims, the court shall declare the plan adopted.

An experience of the Atchison, Topeka and Santa Fé Railroad during November, illustrates an unusual misuse of the law of receiverships. In 1891, the State of Kansas passed a law prohibiting a corporation, twenty per cent or more of whose capital is owned by aliens, from acquiring real estate in Kansas, and decreeing that all real estate acquired in violation of this law should be forfeited to the state. Judge Myers, of the State District Court of Jefferson County, Kansas, made use of this law early in November, to attempt to place the main line and real estate of the Atchison system, included within Kansas, in the hands of a receiver appointed by himself. The order of the judge was sprung on the officers of the road and the public. The company was given no notice of the proposed proceedings; there was no evidence of any default of obligations on the part of the company, no creditor or security owner had any grievance. The suit was

brought in the name of the Attorney-General of the state by the District Attorney of Jefferson County. The officers of the railroad on the eighth of November appealed successfully to Judge Foster of the United States District Court at Topeka, to take the case out of the hands of Judge Myers. Judge Foster further issued an order restraining the receiver appointed by Judge Myers, from interfering with the management of the railroad until the case could be heard, the date set for the hearing being November 23. In the meantime, the Governor of Kansas had directed the Attorney-General to take personal charge of the suit. The suit came up for a hearing in the Federal Court, December 1 and 2, and was argued before Judge Foster and Judge Thayer of the United States Court of Appeals. The decision of these two judges, rendered December 7, was adverse to the railroad, and favorable to Judge Myers, to whom the case was remanded for trial. The case will now take the regular course and be tried in the District and Supreme Courts of Kansas, and be appealed to the United States Supreme Court. Pending the final decision of the legal questions involved it is agreed the receiver appointed by the court shall not demand possession of the road or interfere with its management by the company. The principal legal points to be decided upon by the courts are (1), Whether the act, prohibiting a corporation from doing business in Kansas if twenty per cent or more of its capital is owned by aliens, was legally and regularly passed by the legislature. It is claimed by some that the act was not passed by the legislature, although it is printed in the statutes of 1891. (2) Whether this act does not impair the obligation of contracts, and (3) Whether the act for this and other reasons is not unconstitutional.

The Diversion of Export Trade to Southern Ports.

There are unmistakable evidences of change in the course which a part of our products are to take to the seaboard. Up to the present time, New York has almost entirely monopolized the export trade of grain, whereas Southern ports have had little export business other than that of cotton shipments. New York shippers are complaining bitterly against the increasing competition of other Atlantic ports and the cities on the Gulf. Last August the New York Produce Exchange made a formal complaint to the Interstate Commerce Commission against the railroads, charging them with giving undue preference to localities other than New York, even to the extent of violating the Interstate Commerce Act. The two principal charges mentioned by the New York Produce Exchange, were, that the railroads in giving differentials of two cents in the case of Philadelphia, and three cents in the case of Baltimore, Newport News and Norfolk, in freight

charges for grain, flour and provisions, were unduly and illegally discriminating against New York. The complaint further alleges that the Joint Traffic Association, in maintaining these differentials and in enforcing other rules and regulations, have discriminated against New York and violated the Interstate Commerce Act.

It is doubtful whether the New York merchants can prove their charges against the railway; but there is no doubt but what the cities competing with New York for the export trade have certain advantages, the force and consequences of which New York merchants must expect to meet. In the matter of nearness to Chicago and the Middle West and Northwest, New Orleans and other Gulf ports have a decided advantage. New Orleans is as near Chicago as is New York.

St. Louis	is	1066	miles	from	New	York,	706	miles	from	New	Orleans
Kansas City	"	1343	"	"	"	"	856	"	"	"	"
Omaha	"	1403	"	"	"	"	1058	"	"	"	"
St. Paul	"	1322	"	"	"	"	1261	"	"	"	"

The ports competing with New York have made very important improvements in terminal facilities within recent years, so that it is possible to transfer grain from the cars to the ocean vessels more quickly and more cheaply in Baltimore, Norfolk, New Orleans, and other cities than at New York. In New Orleans, for instance, the Illinois Central has spent $2,000,000 in the construction of a mammoth wharf and dock. New York City has the largest and most commodious harbor of any port; but, in one sense, the very size of the harbor of New York is a disadvantage. Grain has to be lightered from the cars to the vessels at an expense of 1¼ cents a bushel.

During the past year, New York has seen her competitors increase the percentage of their export shipments far more rapidly than she has been able to. There has been no absolute decrease in the shipments from New York; on the contrary, there has been an actual increase, but the increase has been very slight in the case of New York and very large in the case of numerous other cities, particularly Boston, Baltimore, Norfolk, Newport News, New Orleans and Galveston.

New York is in no danger of losing her commercial supremacy. She is favored by the possession of the greater portion of the import trade from foreign countries; by having an ocean service superior to that possessed by any other city; by having an unrivaled harbor, and by the fact of the great concentration of business in that largest centre of population in the country. The fact that New York has the greatest import trade is of immense importance, and it is doubtful whether any city can ever deprive New York of this advantage.

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